

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

DONNY JOEL HARVEY, # 297949 §
§
v. § CIVIL ACTION NO. G-00-499
§
NATHANIEL QUARTEMAN, §
DIRECTOR OF TDCJ-CID §

ORDER

Before the Court is Petitioner’s “Request Petition Be Held In Abeyance” (Instrument No. 93), along with “Petitioner’s Statement” and exhibits numbered 38 through 42. (Instrument No. 94). Petitioner informs this Court that he “brought a state petition in the trial court on or about the 26th day of March, 2007,” and, relying on the Supreme Court case of *Rhines v. Weber*, 124 S.Ct. 1528 (2005), requests the Court “to stay the instant petition while [he] exhausts the claim.” Reviewing “Petitioner’s Statement” and exhibits, it appears the “claim” he refers relates to the grievance he recently filed with the TDCJ-CID regarding his concerns over his cell mate and alleged threats to his safety. On March 20, 2007, this Court issued an Order and Final Judgment dismissing Petitioner’s federal writ of habeas corpus. On April 8, 2007, Petitioner submitted his Notice of Appeal to the Fifth Circuit Court of Appeals concerning this Court’s March 20, 2007 Order of dismissal. Accordingly, this Court, no longer having jurisdiction to abate this Petition, **DENIES** Petitioner’s request. (Instrument No. 93).

Furthermore, this Court reminds Petitioner that federal habeas corpus relief is available for a prisoner's challenges to the validity of his conviction or fact or duration of his confinement. *Serio v. Members of the Louisiana State Board of Pardons*, 821 F.2d 1112 (5th Cir. 1987). If it

is Petitioner's intent to assert a claim related to the conditions of his confinement, he is advised that any such claim is more appropriately brought under 42 U.S.C. § 1983. *See Cook v. Texas Dept. of Criminal Justice Transitional Planning Dept.*, 37 F.3d 166 (5th Cir. 1994).

DONE at Galveston, Texas this 4th day of May, 2007.



Samuel B. Kent
United States District Judge